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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,069	02/17/2004	Richard Emil Kajander	7362	9467

7590 10/11/2006  
JOHNS MANVILLE  
Legal Department  
10100 West Ute Avenue  
Littleton, CO 80127

EXAMINER

DAVIS, JENNA L

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/780,069

Applicant(s)

KAJANDER, RICHARD EMIL

Examiner

Jenna Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24, 26-30 and 39-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 24, 26-30 and 39-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24, 26-30, and 39-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 24 it is not clear which particles are intended by the limitation "at least 95 wt. Percent of the particles of which have a particle size of less than 200 mesh."

In claims 27 and 28 it is not clear whether both the kaolin and limestone both have the particle size claimed or if only one of the materials must be the size.

Claims 29 and 42 depend from cancelled claim 25 and are indefinite as to scope and meaning.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24, 26-30, and 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaffee (US 6,187,697) in view of Leclercq (US 20030175478).

USPN 6187697 issued to Jaffee et al discloses fibrous nonwoven multiple layer composites (abstract). The nonwoven layers can be made of glass fibers (column 5, line 27) of different lengths and fiber diameters, but specifically shows that 13 micron in diameter is used

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(col. 6, line 6). A binder is used to bond the fibers together. The composition targets for the composite are about 75% grass fibers, 20-22.5 % binder.

With regard to the surface smoothness it is the position of the Examiner that it is reasonable to presume that these properties are inherent if not obvious to the composite of Jaffee et al. Support for said presumption is found in the use of compositionally similar materials, at the same weight percentages. The burden is upon Applicant to prove otherwise. See *In re Fitzgerald*, 205 USPQ 594. In addition these claimed properties would be exhibited once the Jaffee et al composite was provided. See *In re Best* 195 USPQ at 433 (CCPA 1977). While Jaffee is silent with regard to the particle size of the fillers provided therein, it would have been obvious to a person having ordinary skill in the art to have provided small particles of filler as taught by Leclercq in paragraphs [0039] to [0043] in order to obtain a smooth final product since larger particles would protrude from the coating material. As to the coating weight note that Leclercq teaches providing the coating in an amount of from 200 to 300 gms or from 18.6 to 27.9 gsf which overlaps the coating weight claimed. To have provided the Jaffee coating at this weight would have been obvious as the use of a coating amount known in this environment to produce successful products.

The amount of filler is not that same as that of Applicant however, it is the position of the Examiner that this is a result effective variable and is routinely adjusted by one versed in the art and would have been obvious to have increased or decrease the amount of filler within the coating which would directly affect the surface of the composite. Additionally, increasing the coating or filler amount would totally coat the nonwoven glass fibers so that they do not protrude out as shown in Column 2, or alternatively, increasing the amount of filler would allow the

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coating to stick better to fibers and also fill any voids within the nonwoven thereby making the coating smooth.

Claims 41-44 have been considered and are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaffee et al in view of Leclercq. Jaffee et al. teach that the mats produced according to this invention are useful as a facer for all types of boards such as wood boards, wood product boards, insulating boards, and hard boards of all types, and also as reinforcement and dimensional stabilizers (Abstract). Thus, claims 41-44 are rejected.

***Response to Arguments***

Applicant's arguments with respect to claims 24, 26-30, and 39-44 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna Davis whose telephone number is 571-272-3357. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1111. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jenna Davis  
Primary Examiner  
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